

Mr. Pool

PLM - L

14138

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-198879 (I)

June 25, 1980

[Claim for Travel Expenses for Daughter

Patrick M. Sedlacek
President, Professional Air
Traffic Controllers
Organization Local 715
P.O. Box 4275
Andersen Air Force Base
Yigo, Guam 96912

DL604871

Dear Mr. Sedlacek:

This acknowledges receipt of your letter of May 4, 1980, and specifically refers to that portion of your correspondence in which you present the claim of Mr. William Fowler. As an employee of the Federal Aviation Administration, Mr. Fowler is presently seeking travel and transportation expenses under 5 U.S.C. § 5722 for two daughters from Orlando, Florida, to Guam in connection with his transfer of official station to Guam in October 1978. Mr. Fowler's initial claim dated August 30, 1979, was disallowed by his agency on October 12, 1979. A subsequent grievance in this matter was also denied by the Federal Aviation Administration on December 14, 1979. As a result you have indicated your desire to appeal this matter to our Office.

PP
AGCO

In view of statutory and regulatory provisions relating to our decision-making authority, we will not render a formal decision to you at this time. See 31 U.S.C. §§ 74 and 82d (1976). However, on the basis of the information provided by you, we offer the following observations on Mr. Fowler's claim.

Your submission indicates that at the time of his official transfer in October 1978 Mr. Fowler was the divorced father of two teenage girls, both unmarried, who were residing with their mother, who



011115

B-198879

was their legal guardian. You also indicate that Mr. Fowler was providing support to his daughters-- in accordance with a legal decree--which amounted to more than 50 percent of their subsistence. In July 1979, Mr. Fowler's ex-wife relinquished control and custody of the girls, and Mr. Fowler was awarded legal custody. He subsequently provided air fare from Orlando, Florida, to Guam for his daughters and then proceeded to seek reimbursement from his agency.

Mr. Fowler's claim and subsequent grievance were denied by the agency on the grounds that the girls were not members of his immediate family or household at the time of his transfer in October 1978 as required by the applicable regulations. You in turn have cited our decision in 48 Comp. Gen. 457 (B-165470, January 6, 1969) as authority for concluding that, in the particular circumstances set forth in your submission, Mr. Fowler should be reimbursed for his daughters' travel.

Under section 5722 of title 5, United States Code, Mr. Fowler may be reimbursed for the transportation expenses of his immediate family from the place of actual residence at the time of his appointment to the place of employment outside the continental United States; and these expenses on his return from his post of duty outside the continental United States to the place of his actual residence at the time of his appointment. Implementing regulations contained in the Federal Travel Regulations (FPMR 101-7) (May 1973) provide the following definition of "immediate family" in paragraph 2-1.4d (FPMR Temp. Reg. A-11, Supp. 4 April 29, 1977):

"d. Immediate family.

"(1) Any of the following named members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel:

"(a) Spouse;

"(b) Children of the employee or

B-198879

employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support (The term 'children' shall include natural offspring; stepchildren; adopted children; and grandchildren, legal minor wards, or other dependent children who are under legal guardianship of the employee or employee's spouse.); * * *." (Emphasis added.)

We have consistently held that in order for an individual to be covered by the definition of "immediate family" as it appears in the regulations and consequently entitled to the transportation allowance being claimed, it is necessary for that person to be one of the named individuals and a member of the household of the employee at the time of the employee's transfer. See John C. Raynor, B-187241, July 5, 1977, copy enclosed. Thus, for example, we have held that where there has been a divorce, minor children are members of the household of the parent who has their legal custody. We have held that where an employee moved his children with him to his new assignment 6 months after he obtained a divorce and his former wife had been awarded legal custody of their children, the employee was not entitled to reimbursement of the travel expenses since the children were not legally members of his household at the time of his transfer. B-177701, April 18, 1973, copy enclosed.

We believe that our decision in 48 Comp. Gen. 457 (B-165470, January 6, 1969), which you refer to in your submission, is completely in accord with the reasoning set out above. In that case we held that the 17-year old divorced daughter of a civilian employee at an overseas duty post under a renewal contract who was unable to support herself and her infant daughter and who temporarily resided with a sister in the United States could be considered a member of the employee's household for purposes of satisfying the requirement presently expressed by paragraph 2-1.4d of the FTR. The fact that the employee did not perform home leave travel to which

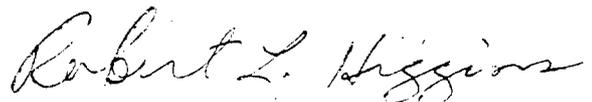
B-198879

he was entitled under his renewal contract did not affect his entitlement to payment of the one-way travel expenses to the overseas station of persons who were members of his household as of the effective date of the renewal contract and who had not previously joined him overseas.

Based upon the facts presented in your submission it would appear that at the time of Mr. Fowler's transfer in October 1978 the children in question were actually residing with their mother who had legal custody of them. It would therefore appear that the children were not then members of Mr. Fowler's household within the meaning of paragraph 2-1.4d of the FTR, and consequently Mr. Fowler would not be entitled to travel and transportation expenses under 5 U.S.C. § 5722 for the childrens' travel in July 1979. Furthermore, it would appear to follow that the fact that Mr. Fowler provided more than 51 percent of the childrens' support during the period from October 1978 through July 1979 has no dispositive affect on the issue of whether his children were members of his household within the meaning of paragraph 2-1.4d of the FTR. See for example B-129962, November 17, 1976, copy enclosed.

We hope these observations will be of assistance to you. If, after considering the foregoing, Mr. Fowler still wishes to file a claim concerning this matter, it should be addressed to the Associate Director, FGMS - Claims Group, U.S. General Accounting Office, Washington, D.C., 20548. See part 31, title 4, Code of Federal Regulations (1980). Consideration of his claim will be expedited if the procedural requirements of the part are completed prior to submission of the claim.

Sincerely yours,



Robert L. Higgins
Assistant General Counsel

Enclosures